

JAN 18 2005

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5453
Thomas Willsey, William Wittman,)
Greg Bedula, and James Nelson)

SENSITIVE

GENERAL COUNSEL'S REPORT #5

I. ACTIONS RECOMMENDED

1. Find reason to believe that Thomas Willsey knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
2. Find reason to believe that William Wittman, Greg Bedula and James Nelson knowingly and willfully violated 2 U.S.C. § 441f.
3. Enter into conciliation with Thomas Willsey, William Wittman, Greg Bedula, and James Nelson prior to a finding of probable cause to believe.
4. Approve the attached Factual and Legal Analyses and conciliation agreements.

II. DISCUSSION

In our previous reports to the Commission (First General Counsel's Report, dated May 3, 2004; General Counsel's Report #2, dated September 1, 2004; and General Counsel's Report #3, dated September 20, 2004), we informed the Commission about an internally generated matter concerning apparent violations of the Federal Election Campaign Act of 1971, as amended ("the Act"),¹ by the Giordano for U.S. Senate Committee ("the

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
2005 JAN 18 PM 12:38

26044131046

Committee”) and others. The Commission found reason to believe that certain respondents made contributions in the name of another, accepted a prohibited contribution from a national bank, accepted excessive individual and prohibited corporate contributions, failed to provide contributor information for a significant number of contributors, failed to use best efforts to obtain the missing contributor information, failed to file the 2002 Mid-Year and Year-End Reports, and, as officers of a company, consented to the company’s reimbursement of employees for making political contributions.

Since the Commission’s votes, information obtained during the course of discovery has brought to our attention five additional potential respondents. In a November 2, 2004 letter to this Office, Respondent Michael Watts provided information regarding a scheme perpetrated by him and five other individuals whereby his employer Arthur A. Watson & Company, Inc. (“the Company”) would reimburse employees’ contributions to the Committee.² This Report discusses these new facts, and recommends the Commission find reason to believe four of the other individuals knowingly and willfully violated 2 U.S.C. §§ 441b(a) and/or 441f, and enter into pre-probable cause conciliation with them.

III. FACTUAL AND LEGAL ANALYSIS

A. Thomas Willsey

Michael Watts was Senior Vice-President of the Company in April 2000. At that time, he approached Thomas Willsey, President of the Company, with the idea that employees of the Company should make contributions to the Committee. Mr. Willsey agreed with the idea and five employees, including Mr. Watts, made donations on behalf of

² Arthur A. Watson & Company, Inc. is a corporation organized under the laws of Connecticut. At some point after the events in this matter occurred, Arthur A. Watson & Company, Inc. was purchased by BankNorth, and is now wholly owned by BankNorth. Since BankNorth is assuming liability for Arthur A. Watson & Company, Inc., the term “the Company” as used herein refers to both entities.

26044131047

1 themselves and their spouses to the Committee, totaling \$2,000 per employee. Mr. Watts
2 also recommended to Mr. Willsey that the Company reimburse the employees for the full
3 \$2,000 contribution.³ According to Mr. Watts, Mr. Willsey devised a plan to reimburse the
4 employees for those contributions. For example, according to Mr. Watts, approximately one
5 month after contributions were made, Mr. Willsey advised Mr. Watts that he would be
6 reimbursed through normal payroll by revising a formula regarding Mr. Watts' commission.
7 According to Mr. Watts, reimbursement also was granted to three other employees of the
8 Company, using different methods such as disguising the reimbursements as commissions or
9 salaries.

10 It is unlawful for any officer of a corporation to consent to any corporate expenditure
11 which may be prohibited contributions to candidates or committees. 2 U.S.C. § 441b(a).
12 Moreover, no person may knowingly help or assist any person in making a contribution in
13 the name of another. 11 C.F.R. § 110.4(b)(1)(iii); *see also* 2 U.S.C. § 441f. The phrase
14 knowing and willful indicates that "actions [were] taken with full knowledge of all of the
15 facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily
16 ed. May 3, 1976); *see also Federal Election Comm'n v. John A. Dramesi for Cong. Comm.*,
17 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and
18 willful"). A knowing and willful violation may be established "by proof that the defendant
19 acted deliberately and with knowledge" that an action was unlawful. *United States v.*
20 *Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of
21 a knowing and willful violation could be drawn "from the defendants' elaborate scheme for

³ Initially, this Office had received conflicting information regarding the number of individuals who made improper contributions. However, it now appears that four individuals made contributions and improperly were reimbursed by the Company. It appears that a fifth employee made a contribution, but that the Company did not reimburse him.

26044131048

1 disguising their ... political contributions....” *Id.* at 214-15. The court also found that the
2 evidence did not have to show that a defendant “had specific knowledge of the regulations”
3 or “conclusively demonstrate” a defendant’s state of mind,” if there were “facts and
4 circumstances from which the jury reasonably could infer that [the defendant] knew her
5 conduct was unauthorized and illegal.” *Id.* at 213 (quoting *United States v. Bordelon*, 871
6 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)). Finally, “[i]t has long been
7 recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of
8 motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360
9 U.S. 672, 679 (1959)).

10 Mr. Willsey, as President of the Company, consented to the use of corporate funds to
11 reimburse employees for their contributions to the Committee by devising the scheme and
12 approving the contributions and subsequent reimbursements. Mr. Willsey’s attempts to
13 conceal the reimbursements by disguising the reimbursements as commissions or salary,
14 demonstrate he knew it was improper to reimburse the employees. Given the actions Mr.
15 Willsey took in devising a scheme to reimburse employees’ political contributions with
16 Company funds and concealing the reimbursements, this Office recommends that the
17 Commission find reason to believe Mr. Willsey knowingly and willfully violated 2 U.S.C.
18 §§ 441b(a) and 441f. Furthermore, given that there are a number of other Respondents
19 involved in this matter with whom this Office has been able to reach quick resolutions,
20 including the Company and Mr. Watts, this Office recommends that the Commission enter
21 into pre-probable cause conciliation with Mr. Willsey as discussed in Section IV of this
22 report.

26044131049

1 **B. William Wittman, Greg Bedula, James Nelson**

2 Mr. Watts also approached four employees and requested that they make
3 contributions to the Committee. All four made contributions on their own and their spouses'
4 behalfes, totaling \$2,000 per employee. The Company then reimbursed three of the
5 employees, in addition to Mr. Watts, for those contributions: William Wittman, Greg Bedula
6 and James Nelson.

7 It is unlawful for any person to make a contribution in the name of another. 2 U.S.C.
8 § 441f; 11 C.F.R. § 110.4(b)(1)(i). The phrase knowing and willful indicates that "actions
9 [were] taken with full knowledge of all of the facts and a recognition that the action is
10 prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *see also Federal*
11 *Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986)
12 (distinguishing between "knowing" and "knowing and willful"). A knowing and willful
13 violation may be established "by proof that the defendant acted deliberately and with
14 knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th
15 Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful violation
16 could be drawn "from the defendants' elaborate scheme for disguising their ... political
17 contributions...." *Id.* at 214-15. The court also found that the evidence did not have to show
18 that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a
19 defendant's state of mind," if there were "facts and circumstances from which the jury
20 reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal."
21 *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439
22 U.S. 838 (1989)). Finally, "[i]t has long been recognized that 'efforts at concealment [may]

26044131050

be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

In making a contribution, but then accepting reimbursement from the Company, disguised in the form of commissions or salary, these employees knowingly made a contribution in the name of the Company. Accordingly, this Office recommends that the Commission find reason to believe Mr. Wittman, Mr. Bedula and Mr. Nelson knowingly and willfully violated 2 U.S.C. § 441f. Given that there a number of other Respondents involved in this matter, including the Company and certain officers of the Company, this Office recommends that the Commission enter into pre-probable cause conciliation with them as discussed in Section IV of this report.

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

26044131051

32

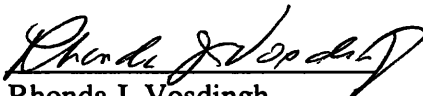
26044131052

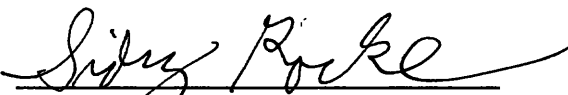
V. RECOMMENDATIONS

1. Find reason to believe that Thomas Willsey knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
2. Find reason to believe that William Wittman, Greg Bedula and James Nelson knowingly and willfully violated 2 U.S.C. § 441f.
3. Enter into conciliation with Thomas Willsey, William Wittman, Greg Bedula, and James Nelson prior to a finding of probable cause to believe.
4. Approve the attached Factual and Legal Analyses.
5. Approve the attached Conciliation Agreements.
6. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

1/14/05
Date

BY: 
Rhonda J. Vosdinger
Associate General Counsel for Enforcement


Sidney Locke
Assistant General Counsel


Alexandra Dumas
Attorney

Attachments:

- 1 Factual and Legal Analysis and Proposed Conciliation Agreement for Thomas Willsey

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
2. Factual and Legal Analysis and Proposed Conciliation Agreement for William Wittman
 3. Factual and Legal Analysis and Proposed Conciliation Agreement for Greg Bedula
 4. Factual and Legal Analysis and Proposed Conciliation Agreement for James Nelson

26044131054